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IN THE MATTER OF THE FORMER HIGH VOLTAGE SITE, ECRA Case 89374,  and  RAYMOND AND JEANNE MELLEN.	: : : :	SETTLEMENT AGREEMENT
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1. This settlement agreement is entered into by the New Jersey Department of Environmental Protection ("DEP"), pursuant to the authority vested in the Commissioner of DEP by N.J.S.A. 13:1D-1, et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq., and duly delegated to the Assistant Commissioner for Site Remediation, pursuant to N.J.S.A. 13:1B-4, and by Raymond Mellen and Jeanne Mellen (the "Mellens").

2. The High Voltage site ("Site") is comprised of approximately 7.5 acres of real property located at 211 Randolph

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Avenue, Avenel, Middlesex County, New Jersey, this Site also being known as Block 922, Lots 4, 5, and 6, on the tax map of the City of Woodbridge.

3. The Mellens purchased the Site in July 1978 from Natvar Corporation, which at the time was in the process of merging with High Voltage Engineering Corporation ("High Voltage"). For most of the period of the Mellens' ownership the Site was operated by Mellen Chemicals, Inc.

4. The Mellens agreed in 1985 to sell the Site to Pride Solvents & Chemical Company ("Pride"). The proposed sale to Pride was subject to the requirements of the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6, *et seq.* ("ECRA"), and an environmental investigation thereafter was conducted. During the ECRA investigation, it was discovered that hazardous substances, as defined in N.J.S.A. 58:10-23.11b, had been discharged at the Site. These hazardous substances have contaminated the soil and ground water at the Site, and possibly offsite.

5. As a result of the discovery of hazardous substances at the Site, the Mellens brought suit against High Voltage alleging that High Voltage was responsible for the discharges and to remediate the Site. As part of the settlement of that

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litigation, High Voltage, Mellen Chemicals, Inc., and the Mellens entered into an administrative consent order with DEP in August 1989 to conduct the required remediation (the "1989 ACO"). In accordance with the terms of the 1989 ACO, High Voltage was to fund and conduct the remediation and to post financial assurance to cover the cost of the remediation. The Mellens and Mellen Chemicals, Inc. were required to conduct remediation only if High Voltage were unable to meet its remedial obligations. Although some remedial work was performed, High Voltage filed for bankruptcy in 2005, before remediation of the Site was completed.

6. Since 2007, Pride, High Voltage, the Mellens and DEP have been addressing the funding for and remediation of the Site and any contamination emanating therefrom.

7. In 2008, High Voltage and the Mellens settled a dispute in High Voltage's bankruptcy proceeding regarding High Voltage's obligations under the ACO for the completion of remediation of the Site. As part of this settlement agreement, the High Voltage bankruptcy estate paid to the Mellens \$2,250,000 in exchange for a release of all claims. Simultaneous with settlement with the Mellens, High Voltage waived any claims regarding the remaining financial assurance funds that remained

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posted with DEP by High Voltage (approximately \$1,578,675) in exchange for a release from DEP. In 2009, the High Voltage bankruptcy estate settled its liability with Pride for \$270,000 in exchange for a release of all claims.

6. The Mellens wish to end their potential liability to DEP that results from the contamination of hazardous substances at the Site and potentially beyond. The Mellens hereby agree to pay to DEP Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in exchange for a release of all liability related to the contamination at, on, or emanating from the Site, including natural resource damages and vapor intrusion, and a covenant not to sue and contribution protection, in accordance with the terms of this Agreement.

7. Within 30 calendar days after the effective date of this settlement agreement, the Mellens shall pay to DEP \$2,500,000.00 by way of check payable to the "Treasurer, State of New Jersey," and submit it to the Section Chief, Cost Recovery and Natural Resource Damages Section, New Jersey Division of Law, P.O. Box 093, 25 Market Street, Trenton, NJ 08625-0093.

8. In consideration of the payment made pursuant to paragraph 7 above, and except as provided in paragraph 11 below, DEP covenants not to sue or to take administrative action

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against the Mellens for any costs or damages that are the result of the discharge of hazardous substances at the Site. In addition, DEP hereby releases the Mellens from any liability related to the hazardous substances at the Site, including but not limited to the presence of hazardous substances on the Site, the migration of any hazardous substances off-site, on-site or off-site vapor intrusion and any natural resource damages related to the hazardous substances on or emanating from the Site.

9. The release and covenant contained in paragraph 8 above shall take effect upon the receipt by the Division of Law of the payment specified above.

10. The 1989 ACO shall terminate when this Settlement Agreement becomes effective.

11. The covenant contained above does not pertain to any matters other than those expressly stated above. DEP reserves, and this settlement agreement is without prejudice to, all rights against the Mellens concerning all other matters, including:

a. liability for any future discharge or unsatisfactory storage or containment of any hazardous substance by the Mellens at the Site, other than as approved by DEP; and

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b. criminal liability.

12. The Mellens covenant not to sue or assert any claim or cause of action against the State of New Jersey, including any department, agency or instrumentality of the State of New Jersey, concerning matters arising out of the discharge of hazardous substances at the Site.

13. Nothing in this settlement agreement shall be considered an admission by the Mellens or a finding by DEP of any wrongdoing or liability on the Mellens' part for anything DEP has actual knowledge of having occurred at the Site as of the effective date of this settlement agreement.

14. The Mellens and DEP each expressly reserves all rights, including any right to contribution, defenses, claims, demands, and causes of action, that each may have concerning any matter, transaction, or occurrence concerning the Site against any person not a party to this settlement agreement.

15. When effective, this settlement agreement shall constitute an administratively-approved settlement within the meaning of N.J.S.A. 58:10-23.11fa(2)(b) and 42 U.S.C. section 9613(f)(2) for the purpose of providing protection to the Mellens from contribution actions to the maximum extent allowed by law.

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16. In order for the Mellens to obtain protection as noted in paragraph 15 above, DEP will publish notice of this settlement agreement in the New Jersey Register and on DEP's website, in accordance with N.J.S.A. 58:10-23.11e2.

17. The Mellens will publish legal notices describing the settlement in three newspapers of general circulation in the area of the Site for a period of not less than three days.

18. DEP will also provide written notice of the proposed settlement to all other potentially responsible parties of whom DEP has notice as of the date DEP publishes notice of this proposed settlement in the New Jersey Register.

19. DEP will sign this settlement agreement unless it receives information during the comment period that discloses facts or other information to DEP that indicate to it, in its sole discretion, that this settlement agreement is inappropriate, improper, or inadequate.

20. This settlement agreement is effective on the date the last party to it has signed it.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

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By: \_\_\_\_\_

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Assistant Commissioner for Site Remediation

Dated:

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Raymond Mellen

Dated:

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Jeanne Mellen

Dated:

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